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I. LAND AND PEOPLE

"This section should contain information about the main ethnic and demographic characteristics of the country and its population, as well as such socio-economic and cultural indicators as per capita income, gross national product, rate of inflation, external debt, rate of unemployment, literacy rate and religion. It should also include information on the population by mother tongue, life expectancy, infant mortality, maternal mortality, fertility rate, percentage of population under 15 and over 65 years of age, percentage of population in rural areas and in urban areas and percentage of households headed by women. As far as possible, States should make efforts to provide all data disaggregated by sex". (Consolidated guidelines for the initial part of the reports of States parties, HRI/CORE/1, annex.)

1. The following documents are attached in connection with this section:*

Fifth Population Census and Fourth Housing Census, 1990. Final results. Published by the National Institute of Statistics and Censuses (INEC);

Ecuador, Basic Data and Indicators, 1991. Published by the National Development Council (CONADE) with the sponsorship of the Haans Seidel Foundation;

Global Economic Indicators, CONADE. Information bulletin, 1990;

Social Indicators, CONADE, Information bulletin, 1990;

Information on Economic and Social Indicators, Ministry of Foreign Affairs.

II: GENERAL POLITICAL STRUCTURE

"This section should describe briefly the political history and framework, the type of government and the organization of the executive, legislative and judicial organs". (Consolidated guidelines, HRI/CORE/1, annex.)

A. Political history and framework

2. There is evidence that the territory now occupied by Ecuador was inhabited as early as 10,000 B.C. Here there developed the Valdivian culture, which introduced the cultivation of maize and produced an extremely fine type of pottery, with the main emphasis on female figures linked with fertility rites. In subsequent centuries major cultures developed and attained a high

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* These documents, submitted by the Government of Ecuador in Spanish, may be consulted at the United Nations Centre for Human Rights.

level of civilization, forming local confederations and kingdoms in various parts of Ecuador. Some 300 years before the Inca invasion, the Shyri-Puruhá Confederation was set up, holding sway throughout the central and northern region, while in the south the Cañari Confederation controlled the territory now occupied by the provinces of Cañar and Azuay.

3. In 1478 the Inca Túpac Yupanqui set out to conquer this territory. He attacked and defeated the Cañaris, and then settled in Tomebamba. After some 30 years of fighting, the Inca Huayna Cápac succeeded in routing the Shyri-Puruhá Confederation at the battle of Yahuarcocha. Over the next few years, the northern region of Tahuantinsuyo, with Quito as its centre, gained greatly in importance. The city was chosen as the second capital of the empire.

4. After Huayna Cápac's death, rivalry and wars over the succession to the throne between Atahualpa in Quito and Huáscar in Cuzco weakened the power of the Incas sufficiently for a small group of 200 adventurers, under the leadership of Francisco Pizarro to overthrow this highly developed civilization, which, according to various estimates, had a population of some 10 million. The conquest led to the destruction of the indigenous civilizations and decimated the population. The survivors were exploited under the system of encomiendas mitas y obrajes, through which the Indians were forced to provide labour and reduced to a state similar to slavery.

5. During the colonial period, Quito was the capital of the Real Audiencia de Quito, which was set up in 1563. It was also an artistic and cultural centre with the establishment of a university and the development of the Quito school of art, which, together with those of Cuzco and Mexico helped to develop Hispanoamerican colonial art to its highest level.

6. The wars of independence started at the beginning of the nineteenth century. Although the movement had been simmering previously, the influence of events such as the French Revolution, the independence of the British colonies in North America, the French invasion of Spain and the spread of liberal ideology led to an open struggle against Spanish dominion. The call for independence was first heard on 10 August 1809, in Quito. This movement was crushed by Spanish troops after a few months. The final victory was won at the battle of Pichincha on 24 May 1822.

7. When Ecuador started out on its independent existence, it was politically linked to Greater Colombia, which comprised what are now the republics of Venezuela, Colombia, Panama and Ecuador. It seceded on 13 May 1830. The first half of the nineteenth century was characterized by conflicts between rival factions, the growth of militarism, increasing political instability and very little economic development. After 1860 there was a marked increase in exports of traditional products, such as coffee, and in particular cocoa, which revolutionized Ecuador's economy and developed the strength of the crop exporters who formed the liberal-minded bourgeoisie. Serious conflicts arose between coastal exporters and highland landowners, most of whom were of a conservative bent. The conservative movmement reached its peak under the Government of Gabriel García Moreno, which brought considerable material progress to the country, but at the cost of a total lack of civil liberties.

8. In 1895 the liberal revolution under the leadership of General Eloy Alfaro rekindled popular hope of far-reaching change. Major works were undertaken: the railway begun by García Moreno was completed; secular education was established; and the growth of exports made economic development possible. However, prosperity did not lead to an improvement in the living conditions of the people. Among the major reforms, mention should be made of the reduction in the power of the Catnolic Church, the expropriation of its large estates, the modernization and integration of the economy and the opening-up of the country to foreign markets.

9. In 1941 Ecuador was attacked by Peru and as a result lost almost half its territory. It was in those circumstances that the Rio de Janeiro Protocol was signed on 29 January 1942. On 28 May 1944 a popular uprising throughout Ecuador brought down the Government of Alberto Arroyo del Río. Doctor José María Velasco Ibarra was declared President.

10. Between 1948 and 1960 Ecuador experienced a period of democracy, during which it had three Governments. This period was marked by relative economic prosperity, attributable in particular to a large increase in banana exports. An agrarian reform was carried out during the 1960s.

11. The year 1972 marked the start of a new era. Ecuador began to export oil, which became its main source of income. In the same year, the political situation changed. The leader José María Velasco Ibarra (five times President) was overthrown by the armed forces. In February 1976 General Guillermo Rodríguez Lara was replaced by a Supreme Council of Government.

12. The country then embarked on the process of restoring a civilian regime with as its first step the organization of a referendum on a new constitution. On 16 June 1978 the candidate of the "Concentración de Fuerzas Populares" party, the lawyer Jaime Roldós Aguilera, won a majority of votes in the presidential elections. His appointment was ratified in a second round of voting.

13. In 1981 there were armed clashes between Ecuadorian and Peruvian troops in the Cóndor mountain range. President Roldós was killed in an air crash and replaced as President by Dr. Osvaldo Hurtado Larrea, the Vice-President. In 1983 the Supreme Electoral Council called presidential elections for 1984, which were won by the Social Christian candidate León Febres Cordero.

14. In 1988 the Social Democrat Rodrigo Borja became president. Ecuador is now a democracy, where human rights and fundamental freedoms are observed. New elections are due to be held in 1992.

15. For further information, two publications are attached: Visión del Ecuador, by Luis Valencia Rodríguez, 1992, and Ecuador, published by Espasa-Calpe S.A., Madrid, 1982.*

B. Type of government

16. Article 1 of the present Political Constitution reads as follows:

"Ecuador is a sovereign, independent, democratic and unitary State. Its Government is republican, presidential, elective, representative, responsible and alternating.

Sovereignty resides in the people, who exercise it through the organs of government.

The official language is Spanish. Quechua and other indigenous languages are part of the national culture ..."

C. The Executive Power

1. The President of the Republic

17. The Executive Authority is exercised by the President of the Republic, who represents the State. His term of office is four years, and he cannot be re-elected. In order to be President of the Republic, one must be Ecuadorian by birth; be in possession of one's rights of citizenship; be at least 35 years of age at the time of the election; be a member of one of the legally recognized political parties; and be elected by an absolute majority of the votes cast, by direct, universal and secret ballot in accordance with the law.

18. The President of the Republic permanently relinquishes his duties and leaves his post vacant: (a) Upon completion of the term for which he was elected; (b) Upon his death; (c) Upon acceptance of his resignation by the National Congress; (d) Upon the declaration of his physical or mental incapacity by the National Congress; and (e) Upon the declaration of his dismissal or abandonment of his post by the National Congress.

19. In the event of the temporary or permanent absence of the President, he is replaced by: (a) The Vice-President of the Republic; (b) The President of the National Congress; or, (c) The President of the Supreme Court of Justice.

20. The President of the Republic is temporarily absent in the event of:

(a) Sickness which temporarily prevents him from performing his duties; and

(b) Leave of absence.

21. While he is in office, the President of the Republic may not leave the country without the authorization of the National Congress or, if it is not in session, of the Court of Constitutional Guarantees. He may not absent himself from Quito, the seat of the Government, for more than 30 consecutive days. Any conduct which is contrary to these provisions will be considered an abandonment of his post. Nor may he leave the country during the year immediately following the termination of his duties, without the prior authorization of the National Congress or of the Court of Constitutional Guarantees, as the case may be.

22. The following are the powers and duties of the President of the Republic:

(a) To comply with and enforce the Constitution, laws, decrees and international conventions;

(b) To approve, promulgate, execute or oppose the laws enacted by the National Congress or the plenary Legislative Commissions;

(c) To issue, within a period of 90 days, the regulations for the application of the laws, which may not interpret or alter them. If the President of the Republic should consider that the period indicated is insufficient, he may send to the National Congress or the plenary Legislative Commissions a statement of the reasons which will permit him to take up to 90 days more, in order to comply with this provision;

(d) To maintain internal order, to ensure the external security of the State and to determine national security policy;

(e) To appoint and dismiss freely those ministers, heads of diplomatic missions, governors and other public officials in respect of whom he has such authority, in accordance with the law and the juridical administrative statute enacted by the President of the Republic;

(f) To decide on foreign policy and to direct international relations, to enter into treaties and other international conventions in accordance with the Constitution and the laws; to ratify them after their approval by the National Congress; to exchange or deposit, as appropriate, the respective instruments of ratification;

(g) To contract or authorize the contraction of loans, in accordance with the law;

(h) To exercise the highest authority of the police and the armed forces;

(i) To confer military and police ranks and promotions on officials of the police and the armed forces, in accordance with the law;

(j) To order mobilization, demobilization and whatever requisitioning is necessary in accordance with the law;

(k) To order the use of the police and the armed forces, through the appropriate agencies, whenever security and the public service so require;

(l) To appoint and dismiss the officers of the police and the armed forces, in accordance with the law;

(m) To assume political command in wartime;

(n) To approve, in accordance with the law, and as a confidential matter, the manning tables of the police and the armed forces; in peacetime and in an emergency, to call up all or part of the reserves for active service;

(o) To declare a state of national emergency and to assume all or some of the following powers, in the event of imminent external aggression, international war or a serious internal disturbance or disaster, notifying the National Congress, if it is in session, or the Court of Constitutional Guarantees:

(i) To decree the advance collection of taxes and other levies;

(ii) In the event of international conflict, imminent invasion or internal disaster, to use treasury funds allocated for other purposes, except those for health and social welfare, for the defence of the State or for action to deal with the disaster;

(iii) To transfer the seat of government to any part of the national territory;

(iv) To close or open ports temporarily;

(v) To impose prior censorship on the media;

(vi) To suspend the constitutional guarantees; under no circumstances, however, may the President decree the suspension of the right to the inviolability of life and to personal integrity or the expatriation of an Ecuadorian, or order his internal exile to anywhere outside the provincial capitals or to a different area from the one in which he lives; and

(vii) To declare the national territory a security area, in accordance with the law.

The National Congress or, if it is in recess, the Court of Constitutional Guarantees, may revoke this declaration if the circumstances so warrant;

(p) To repeal the declaration of the state of emergency, when the reasons for imposing it have disappeared, and to notify this action to the National Congress or the Court of Constitutional Guarantees, as the case may be, without prejudice to the report that he must submit to the body in question;

(q) To submit to the National Congress an annual report on his work and on the general state of the Republic, which he has to deliver every year on 10 August;

(r) To hold a popular referendum on issues which in his opinion are of fundamental importance to the State, and especially on proposals to amend the Constitution, in the cases provided for in Article 143, and on the approval and ratification of any international treaties or agreements which have been rejected by the National Congress or the plenary Legislative Commissions or by the President of the Republic himself; and

(s) To exercise the other powers inherent in his high office that are vested in him by the Constitution and the laws.

23. The following persons may not be elected President of the Republic:

(a) Anyone who has held the office of President of the Republic in his own right or as a permanent replacement;

(b) Anyone who has exercised de facto government;

(c) Anyone who is the spouse or a relative of the incumbent President of the Republic, within the fourth degree of consanguinity or the second degree of affinity;

(d) Anyone who held the office of Vice-President of the Republic in his own right or as a permanent replacement during the period immediately prior to the election;

(e) Anyone who is a Minister of State at the time of the election or who held such an office six months prior to the election;

(f) Anyone who is an active member of the police or the armed forces or who was an active member six months prior to the election;

(g) Any minister of religion or member of a religious order;

(h) Anyone who personally, or as the representative of a legal entity, has contracts with the State; and

(i) Legal representatives and agents of foreign companies.

2. The Vice-President of the Republic

24. There shall be a Vice-President of the Republic, elected simultaneously with the President, on the same ballot paper, by an absolute majority of the votes cast and by a direct, universal and secret ballot, in accordance with the law. The conditions for the election of the Vice-President are the same as for the President of the Republic. His term of office is four years, and he may not be re-elected. The Vice-President is ex officio President of the National Development Council if he is not acting as President of the Republic.

25. In the temporary absence of the Vice-President, the President of the National Congress or the President of the Supreme Court of Justice shall replace him. If he should be permanently absent, the National Congress shall proceed to elect a Vice-President, by a vote of the absolute majority of its members, for the period required to complete the corresponding presidential term of office established by this Constitution. The conditions of incompatibility established for the President of the Republic shall be the same for the Vice-President, in so far as they are applicable.

3. The Ministers of State

26. The conduct of government business is the responsibility of the ministers, who are freely appointed and dismissed by the President. They represent him in matters relating to the ministries of which they are in charge and are responsible for the acts they perform and contracts they enter

into in the exercise of that representation, in accordance with the law. The number and titles of the ministries are decided upon by the President, in accordance with the needs of the State.

27. In order to be a minister, one must be Ecuadorian by birth, be in possession of one's rights of citizenship and be at least 30 years of age. A minister who has been censured by the National Congress loses his position and may not be appointed to any other public position during the same presidential term of office.

28. Every year, ministers submit to the President and for the information of the country a report on the work completed and the plans and programmes to be carried out in their ministries. These reports are sent to the National Congress.

D. The Legislative Power

29. The Legislative Power is exercised by the National Congress, which sits in Quito. It consists of 12 deputies elected by a national ballot; 2 deputies elected by each province (for political and administrative purposes, Ecuador has 21 provinces), except for provinces with less than 100,000 inhabitants, which elect 1 deputy each; and 1 deputy elected for each 300,000 inhabitants or portion thereof above 200,000. Deputies are elected from among candidates nominated by legally recognized political parties from lists approved by the electoral authorities in accordance with the law. The electoral base of 300,000 or portion thereof above 200,000 increases in proportion with the increase in the national population, as recorded in census returns. The Congress may, exceptionally, meet in any other city.

30. National deputies remain in office for four years and may be re-elected on the expiry of the legislative term. They must be Ecuadorian nationals by birth, be in possession of their rights of citizenship, be members of one of the legally recognized political parties, and be at least 30 years old at the time of their election. Provincial deputies remain in office for two years and may be re-elected at the end of the legislative term. To be elected as a provincial deputy, one must be an Ecuadorian national, be in possession of one's rights of citizenship, be a member of one of the legally recognized political parties, be at least 25 years old at the time of election and be a resident of the province in question, or have had one's main place of residence there for an uninterrupted period of at least three years immediately before the election.

31. The following may not serve as members of the National Congress:

(a) The President and Vice-President of the Republic, the Ministers of State, the Comptroller-General, the Attorney-General, the Procurator-General, the members of the Supreme Electoral Court, the Superintendents of Banks and Companies, and the President of the Governing Council and the Director-General of the Ecuadorian Institute for Social Security;

(b) Public employees and, in general, persons who are paid a salary from the public exchequer, or who have been so paid within six months before an election;

(c) Persons holding a public or judicial office, or who have held such an office within six months before an election;

(d) Chairmen, managing directors and legal representatives of banks and other credit institutions established in Ecuador, or of their branches or agencies;

(e) Natural persons, or representatives of legal persons, who have contracts with the State, either directly or through an intermediary;

(f) Members of the armed forces on active service;

(g) Ministers of any religion and members of religious communities;

(h) Legal representatives and agents of foreign companies;

(i) Persons placed under an incapacity by virtue of any other legal provision. The office of legislator is not the equivalent of a public office or public function.

32. The National Congress meets in plenary session, without needing to be convened, in Quito on 10 August every year, and remains in session for 60 days, which may not be extended, to deal exclusively with the following matters:

(a) To appoint from among its membership the Chairman and Vice-Chairman of the Congress, whose term of office lasts for one year;

(b) To invest the President and Vice-President of the Republic whom the Supreme Electoral Court has declared elected;

(c) To interpret the Constitution;

(d) To enact, amend, reform, repeal and interpret laws; to levy or abolish taxes, duties and other sources of public revenue;

(e) To oversee the acts of the Executive Power and of other public authorities, and to consider reports submitted to it by their officials;

(f) To institute public proceedings, during their term of office and for one year after it has ended, against the President and Vice-President of the Republic, the Ministers of State, the members of the Supreme Court of Justice and of the Administrative Tribunal; the members of the Fiscal Tribunal, the members of the Court of Constitutional Guarantees and of the Supreme Electoral Court; the Comptroller-General and Attorney-General, the Procurator-General and the Superintendents of Banks and Companies, for offences committed in the course of their duties; and to censure them if found guilty, with the effect of removing them from office and disqualifying them for public office for the same period. The President and Vice-President of the Republic may only be tried for treason, bribery or other grave offence which seriously impairs the honour of the nation;

(g) To consider and take a decision on apologies or resignations offered by the President or Vice-President of the Republic or by judges, members or officials of courts, tribunals and other organs referred to in the preceding paragraph, except for Ministers of State;

(h) To approve or reject public treaties and other international conventions;

(i) To grant the President and Vice-President of the Republic such authorizations as may be required or withhold them;

(j) To appoint the Comptroller-General, the Attorney-General, the Procurator-General and the Superintendents of Banks and Companies, from lists of three candidates submitted by the President of the Republic, and to remove them from office if necessary;

(k) To grant a general amnesty for political offences and a pardon for ordinary offences where overriding reasons exist for doing so;

(l) To exercise such other functions as may be prescribed by the Constitution and by legislation.

33. The National Congress will establish four legislative commissions, each comprised of seven deputies. These commissions will deal, respectively, with: (a) civil and criminal affairs; (b) labour and social affairs; (c) taxation, fiscal, banking and budgetary affairs; and (d) economic, agricultural, industrial and commercial affairs. The commissions will also deal with related matters and will work full time throughout the year.

34. In addition, to facilitate the legislative process, commissions have been established to deal with the following: Amazon and frontier questions; constitutional questions; international affairs; science and technology; codification; culture; environmental protection; user and consumer protection; human rights; control; women, children and the family; institutional reform; and the rationalization of administrative procedures.

35. The legislative commissions have exclusive powers to deal, in plenary, with the codification of law. To facilitate the discharge of its functions and those of the legislative commissions, the Congress is required to enact the Organic Law on the Legislative Power.

36. The members of the National Congress have to perform their duties solely in the national interest and may not hold any public office, except for a university lectureship; nor may they practise their occupation during the sessions of the National Congress or the plenary sessions of the legislative commissions, as appropriate. In the course of their duties they enjoy parliamentary immunity except in cases of flagrante delicto, identified as such by the National Congress. The membership of the legislative commissions will be partially renewed at the times and in the manner prescribed by law. The members may be re-elected.

37. The Congress may hold extraordinary sessions convened by its Chairman, by the President of the Republic or by two thirds of its members, to deal exclusively with the matters for which the extraordinary session has been convened.

E. The Judicial Power

1. Basic principles

38. The judicial process is a means of doing justice. Justice is not to be sacrificed merely because of the omission of formalities. Procedural law must endeavour to ensure that proceedings are simple, uniform and efficient and must, where possible, adopt the oral system.

39. Unjustifiable delay in the administration of justice is punishable by law and, in the event of repetition, is grounds for the removal of the judicial officer or judge concerned, who is also liable for damages to the parties affected.

40. The administration of justice is free of charge. The Supreme Court of Justice has to lay down rules in this respect. Hearings are in public, except where otherwise prescribed by law, but the courts may deliberate in secret. No case may go to more than three instances. Judicial organs are independent in the exercise of their functions, and no public authority may interfere in matters proper to the Judicial Power.

41. There is jurisdictional unity. Consequently, any administrative act on the part of the central, provincial or municipal authorities, or on the part of any independent body recognized by the Constitution and by law, may be contested before the Fiscal and Administrative Tribunals, in the manner prescribed by law. The judicial career is recognized and regulated by law.

2. Organs of the Judicial Power

42. The organs of the Judicial Power, which are governed by specific laws, are as follows:

(a) The Supreme Court of Justice, the superior courts and the courts and tribunals that come under the Supreme Court in accordance with the law;

(b) The Fiscal Tribunal;

(c) The Administrative Tribunal;

(d) Such other courts and judicial machinery as may be established by law.

3. Organization and functioning

43. The Supreme Court of Justice, the Fiscal Tribunal and the Administrative Tribunal have jurisdiction throughout the national territory, their seat being in Quito. The number of judges in each court, and the organization and operation of their chambers, are prescribed by law. The judges of the Supreme

Court of Justice, of the Fiscal Tribunal and of the Administrative Tribunal are liable for any loss sustained by the parties owing to delays in the administration of justice, the denial of justice or breaches of law. The National Congress, or, when it is not sitting, the legislative commissions in plenary, shall institute public proceedings against those responsible.

44. To be a justice of the Supreme Court of Justice, of the Fiscal Tribunal or of the Administrative Tribunal, a person must: (a) be an Ecuadorian by birth; (b) be in possession of his or her political rights; (c) be over 40 years of age; (d) hold a doctorate in jurisprudence; and (e) have practised the profession of lawyer with an unblemished record, or held the office of judge or a university professorship in law for at least 15 years, or meet the requirements prescribed by law as regards the judicial career qualifying a person for such an appointment.

45. The justices of the Supreme Court, of the Fiscal Tribunal and of the Administrative Tribunal are elected by the National Congress, hold office for a period of four years and may be re-elected. Their official functions, and the grounds for their removal from office, are prescribed by law. Vacancies in the Supreme Court, in the Fiscal Tribunal and in the Administrative Tribunal are filled provisionally by the Tribunals concerned, and judges elected in this way will hold office until regular appointments are made by the National Congress.

46. In the event of contradictory findings on the same point of law, the Supreme Court of Justice, sitting in plenary, will decide the rule to govern the question, and that rule will have binding force until such time as the law prescribes otherwise. For this purpose, the justices and the Procurator-General will be convened immediately the discrepancy has arisen, and have to decide within 15 days how it is to be resolved. The Fiscal Tribunal and the Administrative Tribunal, in plenary session, exercise the same power within the same time-limit, in respect of matters within their competence.

47. The organization of the superior courts and of other courts and tribunals is prescribed by law. Justices, judges and government procurators may not practise as advocates, or hold any other public or private post, except a university chair. Nor may they hold office in political parties, or take part in elections. Within their respective territorial jurisdictions, the competence of judges dealing with civil, criminal, labour and tenancy cases and of other special judges is determined, in the event of a judicial conflict, by drawing lots on at least a daily basis, in accordance with the rules laid down by the Supreme Court. This provision does not apply to the competence of judges responsible for pre-trial proceedings.

48. Through their justices the Supreme Court, the Fiscal Tribunal and the Administrative Tribunal may attend the National Congress or the legislative commissions and may speak, without the right to vote, in debates on draft legislation.

49. The State is required to appoint public defenders to protect the interests of indigenous communities, workers and any person lacking sufficient means.

50. The Presidents of the Supreme Court, of the Fiscal Tribunal and of the Administrative Tribunal shall report annually in writing to the National Congress on their work and future programmes.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Judicial, administrative or other competent authorities with jurisdiction affecting human rights

1. Governmental organizations

51. The chief judicial or administrative authorities with jurisdiction affecting human rights, among other things, are the following:

(a) Indigenous Affairs Commission (Presidency of the Republic);

(b) Commission on Human Rights (National Congress);

(c) Special Commission on Human Rights (Court of Constitutional Guarantees);

(d) Directorate-General for Human Rights and Refugees (Ministry of Foreign Affairs);

(e) Sub-secretariat of Justice (Ministry of the Interior and Police).

2. Non-governmental organizations

52. The following is a list of the chief non-governmental organizations concerned with human rights matters:

(a) Amnesty International, Ecuador Section

(b) Latin American Association for Human Rights (ALDHU), headquarters in Ecuador

(c) Commission for the Protection of Human Rights of the Catholic University of Guayaquil

(d) Commission on Culture and Human Rights, Catholic University of Guayaquil

(e) Chone Commission on Human Rights

(f) Esmeraldas Commission on Human Rights

(g) Imbabura Commission on Human Rights

(h) Loja Commission on Human Rights

(i) Macas Commission on Human Rights

(j) Azuay Commission on Human Rights

(k) Cañar Commission on Human Rights

(l) Diocesan Commission on Human Rights (Machala-El Oro)

(m) Ecuadorian Commission on Human Rights

(n) Ecuadorian Justice and Peace Commission, Ecuador Section

(o) Ecumenical Commission on Human Rights (CEDHU)

(p) International Comission of Jurists, Ecuador Chapter

(q) National Commission on Human Rights

(r) Commission for the Defence of Human Rights (CDDH)

(s) Committee for the Defence of Human Rights (CDDH)

(t) Loja Committee for the Defence of Human Rights

(u) Bolivar Committee on Human Rights

(v) Tungurahua Committee on Human Rights

(w) Nororiente Committee on Human Rights

(x) Mons. Romero (Los Rios) Committee on Human Rights

(y) Permanent Committee for the Defence of Human Rights

(z) Committee for the Defence of the Democratic Rights of Workers and the People

(aa) Confederation of Indigenous Nationalities of Ecuadorian Amazonia (CONFENAIE)

(bb) Confederation of Indigenous Nationalities of Ecuador (CONAIE)

(cc) Ecuadorian Episcopal Conference

(dd) Prison Brotherhood of Ecuador

(ee) Latin American Council of Churches (LACC), headquarters in Ecuador

(ff) Diocesan Human Rights Office

(gg) Ecuador Runacunapac Riccharimui (ECUARUNARI)

(hh) Chimborazo Solidarity Front

(ii) Ecuadorian Front for the Defence of Human Rights

(jj) Human Rights Institute, Central University of Ecuador

(kk) International Organization for Migration (IOM)

(ll) Pichincha Runacunapac Riccharimui

B. Remedies available to an individual who claims that any of his rights have been violated and systems of compensation and rehabilitation

1. Remedies under the present Political Constitution

(a) Constitutional habeas corpus

53. Article 19.17 (j) of the present Political Constitution states that:

"Any person who considers that he has been illegally deprived of his freedom may avail himself of the remedy of habeas corpus, either personally or through another person, without need for a written order, before the Mayor or President of the Council - or his alternate - under whose jurisdiction he finds himself. The municipal authority shall immediately order that the petitioner should be brought before it and that the order for the deprivation of freedom should be produced. Its order shall be obeyed without question or excuse by those in charge of the social rehabilitation centre or place of detention.

"Once informed of the background of the case, the Mayor or President of the Council shall order the immediate release of the petitioner if the latter was not brought before him, if the order was not produced, if the order failed to satisfy the legal requirements, if there had been a lack of due process or, lastly, if the reasons for the appeal were found to be justified. An official or employee who fails to comply with the order shall be immediately dismissed from his post or employment without more ado by the Mayor or President of the Council, who shall report the dismissal to the Comptroller's office and to the authority responsible for appointing a replacement.

"After releasing the detainee, the dismissed employee may appeal to the Administrative Court within eight days of receiving notification of his dismissal."

2. Remedies under the law on criminal procedure

(a) Remedy of amparo (judicial habeas corpus)

54. Article 458 of the Code of Penal Procedure provides:

"Any accused person who is detained in violation of the provisions of the Ecuadorian Code of Penal Procedure may seek his release by applying to the judge senior to the one who ordered his detention.

"If the application is lodged with either the Supreme Court or a High Court, it shall be investigated by the President of the Court.

"Where the deprivation of freedom was ordered by a Governor, Assistant Governor, Commissioner of Police or political authority, the complaint shall be lodged with any of the criminal judges of the district in question.

"The application shall be submitted in writing.

"Immediately upon receiving the application, the investigating judge shall order the detainee to be brought before him in order to hear his declaration, which shall be entered in a record to be signed by the judge, the secretary and the petitioner, or by a witness on behalf of the petitioner if the latter is unable to sign. In addition to that declaration, the judge shall request all the information he deems necessary in order to form an opinion and ensure the legality of his decision and, within 48 hours, shall deliver his decision in the manner deemed by him to be lawful. His decision shall be entered in the above-mentioned record.

"If the deprivation of freedom is found to have been unlawful, the judge shall order the immediate release of the detainee. The authorities and persons responsible for the custody of the detainee shall obey his order without question.

"A judge who is found to have ordered the unlawful detention of an individual through malicious abuse of process shall be removed from office, to which end the higher judge who investigated the application or complaint to which the present article refers shall immediately advise the appointing authority or corporation of the dismissal, which must be effected peremptorily; should the person concerned fail to effect the dismissal he may be charged with contempt of authority.

"A higher judge who makes improper use of the power provided for under this article shall himself be removed from office.

"Dismissal shall also follow for any person responsible for the custody of the detainee who fails to comply with the release order referred to in the fifth paragraph of this article.

"The provisions of the foregoing paragraphs are without prejudice to the criminal liability arising from arbitrary detention.

"The parties involved shall be entitled to bring a suit for damages against the criminal judges and judicial officers in the same cases in which such action is admissible in civil matters."

55. Article 459 of the Code of Penal Procedure states that "the parties shall be entitled to bring a suit for damages against the criminal judges and judicial officers in the same cases in which such action is admissible in civil matters."

(b) Remedy of appeal

56. Article 348 of the Code of Penal Procedure states that:

"The remedy of appeal may be invoked by any of the parties against any of the following decisions:

1. Order for a stay of proceedings or dismissal of proceedings;

2. Order for the opening of plenary proceedings;

3. Orders for inhibition and prescription which terminate proceedings;

4. Acquittals or convictions in cases which are heard according to special procedures; and

5. Judgements in cases for settlement and the payment of damages which are tried by criminal judges or courts."

(c) Remedy of annulment

57. Article 360 of the Code of Penal Procedure states:

"The remedy of annulment may be applied for in the following cases:

1. If the criminal judge or court has acted without being competent;

2. If the accused or the defence counsel appointed by the court has not been notified of the initiating order for the investigation of the crime or the accusation by a private person;

3. If the parties have not been notified of the appointment of experts, except in the cases where the law allows this omission;

4. If any of the parties has not been notified of the verdict;

5. If the criminal court has not been legally constituted;

6. If during the trial in the criminal court there has been any violation of the procedure established in the legislation on criminal procedure;

7. If notification of the meeting of the criminal court has not been given within the period prescribed by law;

8. If the members of the court include one or more persons who have been legally challenged;

9. If the judgement does not satisfy all the requirements specified by the law; and

10. If any proceeding laid down by the law was violated during the trial of the case."

(d) Remedy of judicial review with regard to the law

58. Article 373 of the Code of Penal Procedure provides that:

"An application may be made to the Supreme Court for the remedy of judicial review if the law was violated in the judgement, either because it was explicitly infringed, or because it was applied incorrectly or interpreted wrongly."

(e) Remedy of judicial review with regard to the facts

59. Article 385 of the Code of Penal Procedure provides that:

"An application may be made to the Supreme Court of Justice for the review of any verdict of guilty in the following cases:

1. If the existence or identity is established of a person who was believed dead;

2. If an innocent person was convicted by mistake instead of the guilty person;

3. If there are simultaneously two guilty verdicts against different persons in respect of the same crime, which, being contradictory, show that one of them is necessarily wrong;

4. If the judgement was delivered on the basis of false documents or witnesses or of expert reports which are obviously malicious or erroneous;

5. If it has not been proved according to the law that the crime referred to in the judgement was in fact committed;

6. If a person has been sentenced to rigorous imprisonment when under the law he should only have been sentenced to ordinary imprisonment; and

7. If new evidence is brought that clearly proves that the person sentenced is not guilty of the crime imputed to him."

(f) Review of refusal of leave to appeal

60. Article 395 of the Code of Penal Procedure states that:

"An application for review of refusal of leave to appeal may be made when the criminal judge or court has rejected appeal applications that were duly made at the proper time and that are explicitly specified in the legislation relating to criminal procedure.

"This application shall be made to the judge of the court which rejected the correctly submitted appeal application within the three days following notification of the decision rejecting it.

"The application having been made, the judge or court shall, without further ado, remit the case to the Higher Court, which will allow or refuse leave to appeal".

3. Systems of compensation

61. Article 20 of the present Political Constitution provides that:

"The State and other bodies in the public sector shall be obliged to compensate individuals for any damage caused to them as a consequence of public services or of acts committed by their officials and employees in the performance of their duties.

"In such cases, the bodies in question shall have the right of recovery and shall make effective the responsibility of their employees who are found by a judge to have caused damage either wilfully or through gross negligence. The penal responsibility of such officials and employees shall be established by the competent judges."

62. Article 21 of the Constitution provides that:

"When a verdict of guilty has been changed or reversed on appeal for judicial review of the facts, the person who has suffered punishment as a result of that verdict shall be rehabilitated and compensated by the State in accordance with the law."

63. This constitutional provision is reflected in article 392 of the Code of Penal Procedure, which provides that:

"When the Supreme Court of Justice allows the appeal for review of the facts and reverses or changes the sentence against which the appeal is made, the person who has been unjustly sentenced shall be entitled to compensation equivalent to twice the income earned according to his income tax statement for the year immediately preceding his deprivation of freedom and in proportion to the time during which he was imprisoned.

"If there was no income-tax statement, the amount of the compensation shall be equal to double the minimum living wage for workers in general for the entire period that the person sentenced was deprived of his freedom."

64. Persons on whom an enforceable judgement has been imposed shall be liable for damages to the victim jointly and severally (Code of Penal Procedure, art. 329).

65. The second paragraph of article 93 of the Political Constitution provides that:

> "Unjustifiable delay in the administration of justice shall be punishable by law and, in the event of repetition, shall be grounds for the removal of the judicial officer or judge, who, moreover, shall be liable for damages to the parties affected."

66. Furthermore, everyone enjoys the rights recognized by the agreements, covenants and conventions to which Ecuador is a party, and consequently, if a claim is made, may have recourse to any of the national courts or bodies: the National Congress, the Court of Constitutional Guarantees, the Jurisdictional Function, the municipalities; and to any of the competent international bodies; the Human Rights Committee, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the Committee on the Elimination of Racial Discrimination and the Committee Against Torture.

C. Protection of the rights referred to in the various human rights instruments

67. Article 44 of the present Political Constitution states:

> "The State shall guarantee for all individuals, men and women, who are subject to its jurisdiction, a free and effective exercise and enjoyment of the civil, political, economic, social and cultural rights set forth in the declarations, covenants, conventions and other international instruments in force".

68. In addition, the powers and duties of the President of the Republic include those set forth in article 78 (n) of the Political Constitution, which reads:

> "To declare a state of national emergency and to assume all or some of the following powers, in the event of imminent external aggression, international war or serious internal disturbance or disaster, notifying the National Congress, if it is in session, or the Court of Constitutional Guarantees:
>
> ...
>
> 6. To suspend the constitutional guarantees; under no circumstances, however, may the President decree the suspension of the right to the inviolability of life and to personal integrity, or the expatriation of an Ecuadorian, or order his internal exile to anywhere outside the provincial capitals or to a different area from the one in which he lives".

From the foregoing, it can be seen that there are no exceptional circumstances under which the President of the Republic or any other authority may suspend the right to the inviolability of life or to personal integrity.

69. Furthermore, as a way of maintaining a balance between the Powers of the State, if either the National Congress or, if it is not in session, the Court of Constitutional Guarantees considers that the President of the Republic has exceeded his powers by decreeing a state of emergency or by prolonging it unduly, it may revoke the declaration immediately and urge the President to act accordingly.

D. Way in which human rights instruments are made part of the national legal system

70. Article 137 of the present Political Constitution establishes the following:

> "The Constitution is the supreme law of the State. Secondary rules of law and others of inferior rank must maintain conformity with the provisions of the Constitution. Any laws, decrees, ordinances, provisions and international treaties or agreements that are in any way inconsistent with the Constitution or modify its provisions shall be null and void".

71. Article 78 of the same Constitution, which deals with the powers and duties of the President of the Republic, provides as follows in paragraph (f):

> "To decide on foreign policy and to direct international relations, to enter into treaties and other international conventions in accordance with the Constitution and the laws; to ratify them after their approval by the National Congress; to exchange or deposit, as appropriate, the respective instruments of ratification".

72. After the signature of an international convention, the National Congress has to proceed to approve or reject it. Thus article 59 of the Constitution provides:

> "The National Congress shall meet in plenary session, without needing to be convened, in Quito, on 10 August every year and shall remain in session for 60 days, which may not be extended, to deal exclusively with the following matters:
>
> ...
>
> "(h) To approve or reject public treaties and other international conventions."

73. After their approval by the Congress, the President of the Republic is responsible for their ratification and promulgation in the Official Register, in accordance with article 5, paragraphs 1 and 2, of the Civil Code:

> "A law shall not become binding until it has been promulgated by the President of the Republic and until the necessary time has elapsed for it to come to public notice.
>
> "Laws and decrees shall be promulgated in the Official Register and, for legal purposes, the date of promulgation shall be the date of that Register".

E. Can the provisions of the human rights instruments be invoked before, or directly enforced by, the courts or administrative authorities, or must they be transformed into internal laws or administrative regulations in order to be enforced by the authorities concerned?

74. After international agreements or conventions have been approved by the National Congress and ratified by the President, they become fully effective and may be invoked by individuals and enforced by the competent judges, courts and administrative bodies.

F. Institutions or national machinery with responsibility for overseeing the implementation of human rights

75. Among the powers that fall to the Court of Constitutional Guarantees are those established in article 141 of the present Political Constitution:

"1. To ensure compliance with the Constitution, for which purpose it shall call upon the authorities and other officials of the public administration to act accordingly;

...

"3. To hear complaints brought by any private person or legal entity regarding a violation of the Constitution which infringes the rights and freedoms guaranteed by it and, if the Court finds them to be well founded, to bring them to the attention of the relevant authority or body ..."

76. Furthermore, it should be pointed out that the National Congress has organized a Special Commission on Human Rights, composed of legislators representing all political tendencies.

IV. INFORMATION AND PUBLICITY

77. The national Government has carried out human rights training and teaching programmes for law enforcement officials. In March 1990, a seminar on "Training in human rights" was held for 150 members of the national police. The seminar was concerned with general human right topics, the effects of international treaties on human rights and the role of the police in protecting them. A new cooperation agreement has been reached between the Red Cross and the Ministry of National Defence, under which the parties are required to disseminate among military personnel the human rights instruments to which Ecuador is a party and to hold conferences and seminars on international humanitarian law. Similarly, the Diplomatic Academy of Ecuador, in cooperation with the Committee of the Red Cross, has held seminars on these topics with the participation of officers of the armed forces and the national police.

78. Concern for the subject of human rights has even affected the administrative organization of the Ministry of Foreign Affairs, which has set up a Directorate-General for Human Rights and Refugees for the purpose of coordinating all activity in that area.

79. In Accordance with the annual plan of operation for 1991, the Directorate of Human Rights of the Ministy of Foreign Affairs, working with international organizations and national, governmental and non-governmental agencies, has been carrying out a programme of training in international humanitarian law and human rights aimed at various sectors of the society. The annual plan of operation for 1992, a copy of which is attached, includes a number of other activities for the dissemination and promotion of human rights and fundamental freedoms.

80. Considerable work is also being done along these lines by the Latin American Association for Human Rights (ALDHU), in close contact with the Government of Ecuador. In this context, three seminars have so far been held on the following topics:

(a) "First Seminar on Human Rights Education for Judges and Judicial Officers", from 21 to 31 May 1991;

(b) "The Administration of Justice and Respect for Human Rights in Ecuador", in Quito, from 9 to 12 September 1991; and

(c) "Human Rights and the Administration of Justice in Ecuador", in Cuenca, from 7 to 9 October 1991.

81. Ecuador devotes special attention to activities for publicizing and promoting human rights and fundamental freedoms and has said that it is fully prepared to continue working for the promotion of human rights with the competent bodies of the United Nations system and to receive appropriate assistance for this purpose.

Annex

LIST OF SOURCES OF INFORMATION

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* These seven documents have been submitted and may be consulted in the Centre for Human Rights.